

Before the

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FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In the Matter of

Closed Captioning and Video Description
of Video Programming

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MM Docket No. 95-176

To: The Commission

REPLY COMMENTS OF THE A&E TELEVISION NETWORKS

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REPLY COMMENTS OF THE A&E TELEVISION NETWORKS

A&E Television Networks ("the Company"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits these Reply Comments in response to the comments filed on March 15, 1996 in the above-captioned proceeding.

As the Company pointed out in its initial comments, the Commission's historic approach to closed-captioning has achieved considerable gains, and will continue to do so. That approach has relied upon a joint public/private partnership that combines market incentives, government financial support and policy directions to achieve the desired outcome. Various parties who filed initial comments supported the proposition that market incentives will increase over time. Those parties who submitted data with regard to the growing number of deaf or hearing-impaired people acknowledge the existence and growth potential of the market for closed-captioning. For example, the National Captioning Institute estimates that close to 100 million Americans could directly benefit from closed

captioning, including 27 million Americans for whom English is a second language. 1/ Furthermore, according to some estimates, the senior citizens' community alone will have over 40 million members with a hearing loss within ten years' time. 2/

Since federal subsidies began in 1980, the amount of closed captioning has grown dramatically. Broadcast television has reached the point where virtually all of its prime time programming is captioned, and CBS network programming alone has risen from four hours per day in 1991 to 13.5 hours per day currently. 3/ The response of the cable television industry has also been substantial, especially when considered in light of the more limited resources of this significantly newer medium. The overall percentage of captioned programming for the top 20 basic cable and the most widely distributed 6 premium networks is nearly 24 percent. 4/ The level of captioning corresponds to the peak viewing audience, so that approximately 40 percent of prime time programming on cable is captioned. 5/

The suggestion by some commenters that the Commission has used market forces as the sole method of encouraging closed-captioning mischaracterizes

1/ Comments of the National Association of the Deaf ("NAD") at 9.

2/ Comments of NAD at 6.

3/ Comments of CBS, Inc. at 2-3.

4/ Comments of the National Cable Television Association, Inc. ("NCTA") at 4.

5/ *Id.*

the true scope of government policy. 6/ As the Company and others explained in their comments, the Commission's approach to captioning actually involves a blend of government goals, subsidies, and market behavior in a manner that produces desired results in captioning, diversity, and quality of programming without sacrificing other public interest goals. Past increases in captioning have not taken place as a result of any single factor, but as a product of programmers' responsiveness to the marketing opportunities of the closed-captioned community, Department of Education grants, advertising sponsorships, and voluntary grants, all weighed by the Commission against its mandate to develop better programming.

While A&E Television Networks supports the continuation of the Commission's successful policies in fulfilling the mandate of the Telecom Act, any timetable that the Commission imposes should reflect the legislative judgment that there should be meaningful and a realistic phase-in. Requests by certain commenters for a narrow reading of exemptions are unfounded. As directed by the language and intent of the Telecom Act and prior legislation, the Commission should not unduly burden programmers to stifle the development of new networks or programs, nor should it impose restrictions that would keep previously published programming off the air. 7/ Rigidly imposing new requirements without a sufficient

6/ See, e.g., Comments of NAD at 29-31.

7/ E.g., Telecom Act § 305; "Congressional Findings Regarding Access by Hearing-Impaired People to Television Medium," Television Decoder Circuitry Act of 1990, 47 U.S.C. § 303 note ("the availability of decoder-equipped television sets will significantly increase the audience that can be served by closed-captioned

[Footnote continued]

transition period would be destructive to the programming industry and run contrary to the Commission's strategy to promote the growth of new networks and the development of diverse, original programming.

Even for large entities that own networks, an overly restrictive mandate can change and retard the development of original programming. Cable programming decisions are not made in the context of the full resources of the programming entity, but on a division-by-division or show-by-show basis 8/. In other words, in deciding whether to produce new programming or launch a new network, the relevant question is not whether the corporation can afford to lose money; it is whether the venture will be profitable. An aggressive timetable for captioning requirements would threaten the economic viability of new networks and investments in original programming.

Mandatory captioning of all basic cable programming alone would cost up to \$900 million per year. 9/ In any event, the House Report explicitly instructed the Commission not to look at overall corporate resources in making exemption

[Footnote continued]

television, and such increased market will be an incentive to the television medium to provide more programming").

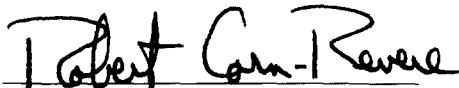
8/ See Comments of NCTA at 12 ("a program network will choose specific programs to be captioned based on the programs' popularity with the viewing audience").

9/ Comments of NCTA at 15.

decisions. 10/ Consequently, extending the market-oriented policy now in place, with sufficient allowance for the difficulties new requirements would impose on cable programmers, provides the most effective course for the Commission to meet all of its responsibilities.

Respectfully submitted,

A&E TELEVISION
NETWORKS

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10/ “When considering [exemptions], the Commission should focus on the individual outlet and not on the financial conditions of that outlet’s corporate parent, nor on the resources of other business units within the parent’s corporate structure.” H.R. REP NO. 204, 104th Cong., 1st Sess. (1995).